IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

THURSDAY, THE 5TH OCTOBER 2006 / 13TH ASWINA 1928

MFA.No. 614 of 1997()

WCC.60/1990 of W.C.C.,ERNAKULAM

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APPELLANT:

AYYAPPAN M.P., MANAKKAPARAMBIL,
MUDAKIZHA P.O., KURUPPUMPADY.

2. KARTHU AYYAPPAN, W/O.AYYAPPAN, 60 YEARS,
MANYKKAPARAMBIL, (P.O.)MUDAKKUZHA.

3. SASI, S/O..AYYAPPAN, 38 YEARS,
MANYKKAPARAMBIL, (.P.O) MUDAKKUZHA.

4. REMANI, D/O. AYYAPPAN, 33 YEARS,
MANYKKAPARAMBIL, (P.O.) MUDAKKUZHA.

(IMPLEADED AS THE LEGAL HEIRS OF THE APPELLANT AS ADDITIONAL APPELLANTS 2 TO 4 VIDE ORDER DATED 18-11-05 IN I.A.NO.2812/05).

BY ADV. SRI.PAULSON C.VARGHESE

RESPONDENTS:

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1. B.M.MAMOOTTY BROTHERS, TIMBER MERCHANTS,
A.M.ROAD, PERUMBAVOOR, REPRESENTED BY ITS
MANAGING PARTNER.

2. M/S. B.M.ABDUL HAMEED, PARTNER,
M/S.B.M.MAMOOTTY BROTHERS, TIMBER MERCHANTS,
A.M.ROAD, PERUMBAVOOR.

3. MR.B.M.MAMOOTTY, PARTNER,
M/S.B.M.MAMOOTTY BROTHERS, TIMBER MERCHANTS,
A.M.ROAD, PERUMBAVOOR.

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 05/10/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Thottathil B. Radhakrishnan, J.

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M.F.A.No.614 of 1997

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Dated this the 5th day of October, 2006.

JUDGMENT

This appeal is by a workman, who filed an application for compensation before the Workmen's Compensation Commissioner. He filed the application contending that he was employed as a Band Resaw Operator under the opposite parties and used to do all the works in the saw mill. It was contended that he was injured during his work and his left leg was amputated below the knee and he suffered compound fracture and fibula cutting of the muscles of the lower third of leg and foot hanging on the dorsal flat of skin. He was aged 49 at the time of the accident and drew a monthly wages of Rs.1,200/-.

2. In opposition to the application for compensation, the opposite parties, firstly, denied that the applicant was employed with them. They also disputed his plea as regards age and wages. They further stated that all the hospital expenses were met

by them and after the treatment, an amount of Rs.25,000/- was paid to him on compassionate basis. They also alleged that the applicant was under the influence of alcohol at the time of the accident and that led to the incident. They even denied that the applicant's left leg was amputated below the knee.

3. During the course of trial, the opposite parties produced a register, which is marked as Ext.01, propounding to be the register of wages that did not contain any signature of the applicant or any entry relating to the applicant. The Commissioner found that the said document is a forged one. They also opposed the marking of medical certificate by contending that the Doctor, who issued the medical certificate, has to be summoned and examined in spite of the settled law on the point. It is also on record that though the incident was not apparently much disputed during the cross-examination of the victim, one of the persons among the respondents gives oral evidence contesting the claim.

4. The incident occurred on 5-12-1987. Having regard to the nature of the contentions in the claim petition, there is no reason to assume that the opposite parties were willing to settle the amounts due to the workman. In the nature of the findings, it is also apparent that the Commissioner had found against the plea of the opposite parties as to the discharge of certain liabilities by making out of court payments and also by meeting the medical expenses.

5. In the aforesaid circumstances, the learned counsel for the claimant urged before me that the Commissioner erred in law in confining the penalty under Section 4A(3)(b) to 15% and that the maximum penalty ought to have been imposed, having regard to the aforesaid facts. The facts, as noticed above, would show that the materials on record disclose that there was no justification for the delay and that the respondents were only trying to evade satisfaction of the lawful entitlement of the workman's claim. However, the Commissioner had, without stating any reasons, decided Issue No.4 by stating that, because

it is an admitted fact that the applicant was a workman under the opposite parties, theyare liable to pay compensation without stating any reason for its fixation of penalty at 15%. Under such circumstances, the impugned order is vitiated on a substantial question of law, in as much as the Commissioner erred in deciding the issue of the amount due to the claimant by way of penalty without adverting to and considering the entire materials on record and the decision not in accordance with law in as much as it is contrary to the evidence on record. Having regard to the nature of the contentions and in view of the fact that they do not even contest this appeal, it is apparent that the respondents are only trying to evade the payments due to the claimant. Reversing the finding of the Commissioner as regards penalty, it is held that the appellant-claimant is entitled to 50% of the amount of compensation as penalty.

6. Regarding the quantum of compensation, the plea in the appeal was that the amendments to the statute made in 1995 would apply retrospectively.

However, going by the decision of the Full Bench in **United India Insurance Co.Ltd. v. Alavi (1998 (1) K.L.T. 951),** the said decision is only to be repelled.

In the result, the impugned order is modified granting the petitioner the entitlement to recover penalty at the rate of 50% of the amount of compensation fixed by the Commissioner from the respondents as penalty and the respondents are directed to pay the same. This appeal is allowed to the aforesaid extent with costs fixed at Rs.1,000/-.

Thottathil B.Radhakrishnan,
Judge.

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Thottathil B. Radhakrishnan, J.

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M.F.A.No.614 of 1997

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JUDGMENT

Dated:5-10-2006